Supreme Court, U.S.
FILED

09126 APR 27 2010

OFFICE OF THE CLERK

In The

Supreme Court of the United States

KAY KIM,

Petitioner,

v.

GEORGE F. PARKER, M.D., IU PSYCHIATRIST & AS AN OFFICER CAPACITY POWER GIVEN BY THE JUDGE, SPECIAL JUDITH S. PROFFITT, INDIANA UNIVERSITY, EMPLOYER OF DR. PARKER,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

KAY KIM, PRO SE
4250 VILLAGE PKWY
CIR EAST UNIT 2
INDIANAPOLIS, IN 46254
(317) 641-5977

QUESTIONS PRESENTED

1. Is a State University entitled to absolute immunity and immunity under the Eleventh Amendment from liability pursuant to 42 U.S.C. § 1983 for its employee's misconduct and conspiracy to violate the civil rights of the Petitioner?

2. Is a State University responsible and liable for the malpractice and tort of its employees?

3. Whether the United States Supreme Court should recognize an exception to absolute judicial immunity from liability pursuant to 42 U.S.C. § 1983 when:

(a) The Judge knowingly violates the 5th Amendment of Double Jeopardy of the Petitioner?

(b) The Judge intentionally and knowingly violates the State's Statue Article 2 §§ 2030 in the criminal proceedings against the Petitioner?

(c) The Judge intentionally appointing a Psychiatrist with vested interest in the Psychiatric Industry contrary to Indiana Statute § 35-36-3-1?

(d) The Judge attempted to solicit favorable outcome that the Petitioner is mentally incompetent stand trial which her sole intention is:

(1) to take away the Petitioner's Self Representation Rights and thereby violating the 6th Amendment?

(2) to commit involuntary civil commitment in lieu of a trial and use as a punishment and not for a treatment?

(e) The Judge intended to put Petitioner into a mental institution to deprive the petitioner's 5th Amendments Rights to due process?

4. Does Judge Proffitt made an error when she removed the Petitioner's Self-Representation rights without a competency hearing?

5. Does the Court appointed Indiana University Associate Professor of Psychiatry Department of Psychiatrist Dr. George Parker have absolute immunity and free from liability pursuant 42 U.S.C. § 1983 when:

(a) Dr. Parker conspired with the judge to intentionally to provide a malicious, intentional negligent and untruthful mental evaluation to the Court?

(b) Dr. Parker intentionally lied and negligently provide a misdiagnosis evaluation to meet the Judge's wishes and violating Fed. R. Evi. 702, Petitioner's Civil Rights/U.S. Constitutions - 5, 6, 8, 14th Amendments?

(c) Dr. Parker claimed with medical certainty that there is no cure and medication for the Practitioner's mental disease but yet recommended an involuntary civil commitment to a mental institution indefinitely in a conspiracy with the Court to use the commitment as a punishment and not a treatment?

6. Did Dr. Parker violates State's Statute § 35-36-3-1 accepting the contract for evaluation?

7. Did the District Court made an error in judgment to make the petitioner pay the full cost of courts/fees when all the Respondents invoke absolute immunity?

8. Did the lower Court meets the Standard of Proceedings in vindication of civil rights pursuant to 42 U.S.C. § 1988 the way case proceeded as to:

(a) The Court denied (by not ruling) on the Petitioner's request for relief and Declaratory Judgment to restore the Petitioner's Self-Representation Rights in the State criminal proceeding?

(b) The Court denied (by not ruling) on the Petitioner request for Injunctive Relief-Order of Stop the Competency Hearing?

9. Did the lower Court made an error to deny the Petitioners self representation rights in the State criminal proceedings while the Petitioner had and is still representing herself Pro Se in the Federal Civil Court, State Civil, State Criminal (until June 10, 2009) and the Small Claims Court?

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	v
TABLE OF CONTENTS	vi
INDEX TO APPENDICIES	vii
TABLE OF AUTHORITIES	ix
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	11
CONCLUSION	18

INDEX TO APPENDICIES

Page

Appendix A – United States Court Of Appeals For The Seventh Circuit Final Judgment March 25, 2010..... 1a

Appendix B – United States Court Of Appeals For The Seventh Circuit Order Decided March 25, 2010..... 2a

Appendix C – United States District Court Southern District of Indiana Entry discussing Motion to Dismiss of George F. Parker, M.D. Dated August 24, 2009.. 7a

Appendix D – United States District Court Southern District of Indiana Entry discussing Motion to Dismiss of Indiana University Dated August 24, 2009..... 10a

Page

Appendix E – United States District Court Southern District of Indiana Entry discussing Motion to Dismiss and Directing Entry of Final Judgment Dated September 17, 2009..... 13a

Appendix F – United States District Court Southern District of Indiana Judgment Dated September 17, 2009..... 15a

Appendix G – Relevant Statute..... 17a

TABLE OF AUTHORITIES

Cases	Page
Cleveland Board of Education v. Loudermill 470 U.S. 532, 470 U.S. 542 (1985).....	16
Gregory v. Thompson, 500 F.2d 59, 63-64 (9th Cir. 1974).....	16
Hudson v. Palmer, 489 U.S. 517.....	17
James v. Brown, 637 S.W.2d 914	14
John Doe v. John Nuckolls and University of California, 9th Cir. Court, 93-16972(1995)	14
Mauriello v. University of Medicine and Dentistry of New Jersey, 781 F.2d 46 (3rd Cir. 1986)	14
Parham v. JR, (1979) 442 U.S. 584, 442 U.S. 606-607.....	16
Parratt v. Taylor, 451 U.S. 527...	17
Randall v. Brigham,(1869)U.S.Supreme Court, 74 U.S. (7Wall.) 523. 19L. Ed 285.....	16
Rouse v. Cameron, (1966) District of Columbia Circuit Court of Appeal	15

Table Of Authorities Continued

Rouse v. Cameron, (1966) District of Columbia Circuit Court of Appeal 15

Re: Sindram, #88-6358, 489 U.S. 1064(1989) 498 U.S. 177..... 17

Wyatt v. Stickney, (1966) Alabama Federal Court 15

Zinermon v. Burch (1990)..... 15,17

Statues & Rules

Page

28 U.S.C. § 1254(1)..... 1

42 U.S.C. § 1983..... 1,10,14,17

42 U.S.C. § 1988..... 1

Fed.R.Evi. Rule 704(b) 9

Code of Indiana Article 2 § § 2030..... 8

Code of Indiana § 35-36-3-1..... 8

OPINIONS BELOW

The opinion of the Court of Appeals is reported as Nonprecedential Disposition to be cited only in accordance with Fed. R. App. P. 32.1 and are reprinted in the Appendix to the Petition (Appendix A) at 1a, (Appendix B) at 2a-6a. The District Court's opinion are reprinted (Appendix C) at 7a-9a, (Appendix D) at 10a-12a, (Appendix E) at 13a-14a, (Appendix F) at 15a-16a.

STATEMENT OF JURISTION

The Court of Appeals entered its judgment on March 25, 2010. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th Amendment-due process, 6th Amendment-self representation, 8th Amendment-cruel and unusual punishment, 14th Amendment-equal protection of the laws to the United States Constitution and 42 U.S.C. § 1983-Civil action for deprivation of rights, 42 U.S.C. § 1988-Proceedings in vindication of civil rights.

Pursuant to Rule 14(f) of the Supreme Court Rules, the citation of relevant constitutional and statutory provisions involved are listed here, while the pertinent text are reproduced in the Appendix G at 17a-18a.

STATEMENT OF THE CASE

Special Judge Judith Proffitt suddenly removed my self representation rights without a hearing. I, Petitioner, Pro Se filed this lawsuit in the District court to restore my rights to self representation and stop the competency hearing. Special Judge Proffitt was excused from my cases and Special Judge Pfleging was appointed to hear my cases.

On the day-September 25, 2009 pretrial, without a hearing, Judge Pfleging used Dr. Parker's mental evaluation report to commit me to Logansport State Mental Institution. I, Petitioner, Pro Se is not a psychic but from their past pattern and practice of fondling the rules and laws I can easily deduct what their next action/step would be – that is to keep me indefinitely in the mental institution without a trial.

Special Judge Pfleging further violated Indiana Statute on commitment. I was unlawfully jailed in the County Jail for 20 days before I was and transported to Logansport State Mental Institution more than 100 miles away from my home on October 14, 2009. The Indiana Statue mandates that I be committed to a local mental clinic close to my home. While in the mental institution I was no given any psychiatric treatment or medication. I, Petitioner, Pro Se was certified to be competent to stand trial by

Logansport State Institution on November 22, The Petitioner was released on my own merit by the on December 21, 2009 to jail. I was released from the jail to my home on December 23, 2009. Regardless, in my criminal proceeding in the State of Indiana, the Court forced upon Public Defender Matthew Gerber on me. The Public Defender further told me before the Sept 25, 2009 pretrial that I, Petitioner, Pro se will be put in the mental institution for at least 3 years but would be considered time served. Further, he implied that my husband and I have to cover the cost of mental institution for $800.00 per day. I have never plea for my case at any time. These gang of three – The Judge, The Public Defender and The Prosecutor armed with the Dr. Parker's report of my mental evaluation cooked up the whole shebang. I, Petitioner, Pro Se is physically handicapped. I could use $800.00 per day money spent in the mental institution for remodeling the home to make me and my aging family's life a bit easier.

The Prosecutor Andrew Wignall is withholding the evidence - actual video tape with audio of the alleged "crime scene" on the day of altercation in its entirety. It captures what the State's witnesses said/signed in the police affidavit and will prove my innocence. People lie even in the murder trial. The State witnesses including police accused me over the years and got me arrest in my own home/condo have never stop lying. Besides that the State and Federal Judges are enabling them by not exposing the truth in a trial. No one

has to account for their unlawful actions all these years. I, Petitioner, Pro Se was unjustly violated because I am in a minority race. All my life, I try not to play the race card but the fact of the matter is just that: racial discrimination. Furthermore when nothing else works, these people change their tactics and accuse me of "Crazy-Mental."

All my charges are misdemeanor. Even without a conviction, my husband and I, Petitioner, Pro Se have already paid and still paying the price of alleged crime. Apart from the physical and mental anguish and public humiliations we have spent over $100,000. I, Petitioner, Pro Se intend to finish the race and stand up for my justice and rights. As it is stand, we are going bankrupt because of my criminal charges which I did not commit.

By the time your Honor read this, all my criminal proceedings would be over one way the other. Even if the State Criminal Court finds me not guilty, I have suffered enough because of Dr. Parker's intentionally negligent mental evaluation report to the Court. The fact that I am suing Dr. Parker and Special Judge Judith Proffitt all the way to the highest court in the land by myself, Pro Se is sufficient proof of Dr. Parker's intentional misdiagnosis and negligence.

This case is about Housing Discrimination that has gone wild. The Condominium Homeowners Association Board of Directors, property managers

and condo owners/residents use the City Police (via their security officer, Police Lieutenant) to discriminate and unlawfully arrest the Petitioner for trespassing on her own property and fail to protect her in her own condo unit. The Police also unlawfully arrested the Petitioner in the City/County Building while she was pursuing the lawsuit in the State Civil Court. The police arrest of the Petitioner makes the new and improved Hybrid way of Housing Discrimination criminal. The entire State and Federal criminal court and civil system are behind the discrimination to lynch/persecute the Petitioner.

There were no probable causes for the arrest of the Petitioner. A few condo neighbors, police, public defenders, prosecutors, judges, etc., are conspiring (conspiracy in character of agreement) to accuse and frame the Petitioner as "Crazy & Mental". They have been ganging up illegally to put me into mental institution since 2005. The only way recourse the Petitioner has is to keep my self representation rights. Without that, there would/will be no trial and I will surely be put away indefinitely into a mental institution.

Conspiracy in Character of the Agreement:

> "No written, formal, or definite agreement is necessary to make a conspiracy. It is enough if there is a meeting of the minds - a mutual, implied understanding of all parties

> working together with a single design. The crime of conspiracy may be committed whether or not the parties understand its entire scope, whether or not the parties are known to each other - as long as their actions lead to the same unlawful deed. The law does not set a particular length of time that the combination has to be formed before the unlawful deed. A time need not be set for the completion of the design. The agreement may result from hours of planning or may arise on the spur of the moment."

I, Petitioner, Pro Se insist from the day 1 that the Court give me a fair trial and if found guilty by the Jury, I will accept the sentence as the Court sees fit including putting me in a mental institution as a punishment. At least in this case, the Petitioner will have a finite sentence and not an open ended indefinite sentence in a mental institution without a trial. That is the reason for not giving up my self representation rights without a fight. Regardless of the Law, people involved in my cases in the State Criminal and Civil Justice System and the Federal Justice System have no rules of engagement and are above the law.

If/when my first federal lawsuit in 2005 (cause no 1:05-cv-1616-SEB-JMS) was handled properly and fairly (by the law, rights and merits) by the District Court, my subsequent sufferings

(numerous arrests, jailed, institutionalized) would never happened/be happening.

The Petitioner was representing myself Pro Se and given a competency hearing in March 2006. No judges in the Marion County Superior Court wanted to hear the three misdemeanors cases.

The Indiana Supreme Court appointed Special Judge Judith Proffitt to hear the three cases in April 2007. From April 2007 till November 2008 the Court did nothing and the Petitioner was never contacted by the Court. The Statue of Limitation for the three misdemeanors cases ran out.

The Petitioner was unlawfully arrested on November 6, 2008 and the three previous cases were mysterious attached to the new misdemeanor case. All the Judges in the Marion County Superior Court and Special Judge Judith Proffitt refused to hear the case. The Indiana Supreme Court denied Special Judge Judith Proffitt's request of her recusal and was ordered to take the case.

The Petitioner, Pro Se demanded that the Court dismiss the three cases with "expired" Statue of Limitation. Special Judge Judith Proffitt refused.

Special Judge Proffitt did not dismiss the three expired cases and allowed them to be attached to the new misdemeanor (November 6,

2008) charge. By having another competency hearing Special Judge Proffitt violated the Plaintiff/Appellant, Kay Kim, Pro Se constitutional rights, by having three mental evaluations and two competency hearings for the same cases.

During the first competency hearing the Petitioner was allowed to question Dr. Parker on the stand. The Court could not take away my self representation rights after the hearing. After the third evaluation with Dr. Parker and the Court remove my self representation rights without a competency hearing. Judge Judith Proffitt attached the three expired cases for Dr. Parker's evaluation thus making the Order for the second competency hearing a Double Jeopardy in violation of the Petitioner's Constitutional Rights.

Pursuant to INDIANA STATUES, ARTICLE 2, Limitation, §§ 2030:

> "Criminal Procedure-Limitation of Actions. – In all other case, prosecutions for a misdemeanor must be commenced within two years,..." (1929 p. 677 §§ 1; 1905 p. 584 §§ 23.)

Dr. George Parker is the Head of Department of Psychiatry in Indiana University who has a vested interest in the Psychiatry Industry. As such Dr. Parker is not a disinterested psychiatrist contrary to Indiana Statue §35-36-3-1. Besides that, the Court and Dr. Parker knew that I,

Petitioner was sent to be evaluated by the same psychiatrist for the 3rd time.

In the last evaluation Dr. George Parker lied without any evidence or test to certify with medical certainty that the Petitioner is a danger to the community and recommended an involuntary civil commitment to a mental institution even though he has certified with medical certainty that there is no cure or medication that is available for the Petitioner's mental disease thereby violating Fed.R.Evi. Rule 704(b). Dr. George Parker has intentionally conspired with the Court to lie and provide a malicious and untruthful evaluation.

Fed.R.Evi. Rule 704(b) as follows:

> "R704(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

Upon receipt of Dr. Parker's report, Special Judge Judith Proffitt removed the Petitioner's rights to self representation without a competency hearing. Special Judge Judith Proffitt adamantly

wanted to use the commitment as a punishment and not a treatment contrary to Indiana Statue.

The Petitioner, Pro Se sued Special Judge Judith Proffitt and Dr. George Parker in the Federal District Court. Dr. Parker is a named Defendant in a law suit and his evaluation should not be allowed to be used against the Petitioner. The Petitioner also asked for relief to restore her rights to self representations and an injunctive order to stop the unlawful competency hearing. Both requests are ignored by the both lower courts.

As to the State University's claim of liability pursuant to 42 U.S.C. § 1983, The State and Federal government is responsible for the tort committed by their employee(s). Indiana University is the employer of Dr. George Parker. The State is responsible for all the mistakes and torts committed by its employees. The State can be sued and liable for its employees. Likewise Indiana University is responsible for all the malice and torts committed by Dr. Parker and can be sued accordingly.

Judiciary Immunity only applies to judiciary rulings and functions. Judiciary Immunity does not cover the violation of the civil and constitutional rights of an individual. Judiciary Immunity does not allow Judge Judith Proffitt to intentionally providing unlawfully evidence for evaluation. Judiciary Immunity does not permit Judge Judith Proffitt to decide on the mental

condition of the petitioner. When Judge Judith Proffitt conspired with a psychiatrist with a vested interest to solicit the favorable outcome of an evaluation, her actions is not immune from law suit.

The District Court and Appeals Court failed to provide the Petitioner with relief to restore her right to self representation and injunction to stop the competency hearing. The District Court and Appeals Court made an error to provide Immunity to Judge Judith Proffitt, Dr. George Parker and Indiana University.

REASONS FOR GRANTING THE WRIT

This is a case of one-Petitioner, Pro Se versus the entire State of Indiana Criminal Justice System. The Federal District and Appeals have not provided the relief to restore my self representation rights. This is the last leg of the race.

As a University Psychiatry Professor, he is teaching the next generation of psychologists and psychiatrists, it is abhorrent that he will willing to stoop this low to show his power over the Petitioner just because he can. He should be the defender of the rights and dignity. of the mentally ill. Instead, he conspires with the Court to persecute and violate the civil rights/U.S Constitution of the mentally ill.

It is sad day for the Court Systems to use his service to prosecute and not protect the mentally ill by using his reports as a weapon/punishment against the mentally ill to deprive them of their civil rights in lieu of trial.

Through out the process, State and Federal Criminal and Civil Justice System have their own rules and law and disregard the rights and merits of the Petitioner. As a matter of fact Lady Justice is blind and she listens and believes the blind man's description(s) of the elephant.

I, Petitioner was/is bullied by the State Criminal Federal Civil Justice System. I am a nobody and the Courts have no respect for constitutional rights and bull dozed my cases through the System as if I do not exist.

I, Petitioner, Pro Se have never avoided a State Criminal trial and am willing to accept whatever punishment if found guilty by a Jury. I have never taken a plea of any kind (especially "mental diversion"). I only asked to be allowed to defend and represent myself. I am innocent of all my charges against me and do not need a Public Defender. The Court however claimed that I am crazy and is using mental/psychiatry as a modern day witch hunt and witch killer(s) to commit me to a mental institution in lieu of a fair trial.

I, Petitioner, Pro Se am a "witch" in their book. Sad to day all my cases initiated on civil-

housing discrimination to force me to move out of my unit. I would have done so, if I have resource(s). I will not move out until I can a place where I am accepted and can live peacefully without police bang and knock on my door to arrest me.

I, Petitioner, Pro Se do not have college degree and came to U.S in my mid 20's. English is my 2nd language and I didn't know there was a law library until year 2005. I do my own research in the law library. Although my English is not perfect I can write my own brief, petition and had taped pretrial conference with the Magistrate Judge, four defense counsels from the city and State.

I am representing myself and have kept up with the all the Federal Courts' Rules and Requirements. Why shouldn't I be allowed to represent myself in the State Criminal Court where Rules and Procedures are much less complicated.

I. THE DECISION BELOW CONFLICTS WITH THE AS TO IU(INDIANA UNIVERSITY).

State and Federal Government is responsible for the tort committed by their employee(s). By the same standard, State University-IU should be responsible for its employees. Associate Psychiatry Professor Dr. Parker uses his IU credential to perform a diagnose and caused the tort to the Petitioner.

Indiana University is not as arm of state entitled to 11th Amendment Immunity from tort liability. Under The Tort Claims Act Indiana University can sue or be sued. Mauriello v. University of Medicine and Dentistry of New Jersey, 781 F.2d 46 (3rd Cir. 1986). State University and Directors of University Department in their official capacity, were persons under and could be fully liable for their actions under § 1983 as they were not entitled to 11th Amendment sovereign immunity as arms of the state. U.S.C.A. Const. Amend. 11; 42 U.S.C.A. § 1983.John Doe v. John Nuckolls and University of California. US 9th Cir Court of Appeals, 93-16972,(1995.)

II. THE DECISION BELOW CONFLICTS WITH THE AS TO PSYCHIATRIST PARKER, M.D AND AS THE IU ASSOCIATE PSYCHIATRY PROFESSOR.

...The Texas Supreme Court also stated that experts can be sued for negligence resulting from their misdiagnoses. And the mere fact that those diagnoses became the subject of testimony in a lawsuit did not insulate the doctors from liability in a negligence action, the court said. *James v. Brown*, 637 S.W.2d 914.

Dr. Parker claimed with medical certainty that there is no cure and no medicine for my mental disease but still recommended indefinite involuntary civil commitment of the Petitioner to a

State mental institution in a conspiracy with the Judge and the Court to use the commitment as a punishment and not as a treatment.

...the District of Columbia Circuit court of Appeals in Rouse v. Cameron (1966) confirmed that the purpose of involuntary hospitalization was treatment, not punishment...

...An Alabama Federal court drew a similar distinction in Wyatt v. Stickney (1972), further maintaining that mere custodial care was insufficient for commitment purposes.

...The Court made clear in Zinermon v. Burch (1990) that the failure to substitute judgment could amount to a violation of civil rights, indicating that there may even be a duty to provide judgment.

III. THE DECISION BELOW CONFLICTS WITH THE AS TO JUDGE PROFFITT.

Judge Proffitt made an error when she took away Petitioner's Self-Representation rights without a competency hearing.

In the Judge's Order to the psychiatrist for an evaluation Special Judge Proffitt has already certified that the Plaintiff /Appellant, Kay Kim, Pro Se is not capable to stand trial and should be treated and restored to competency if possible.

The State of Indiana unlawfully took away the Plaintiff /Appellant, Kay Kim, Pro Se Self-Representation Rights to without a competency hearing and intentionally committed me to a mental institution without a counsel. "Process Clause" mandates that an individual be given an opportunity for a hearing before he is deprived of any significant protected interest... *Parham v. J.R.*, 442 U. S. 584, 442 U. S. 606-607 (1979).

...the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property. *See, e.g., Cleveland Board of Education v. Loudermill,* 470 U.S. 532, 470 U.S. 542 (1985) (*"the root requirement' of the Due Process Clause" is "that an individual be given an opportunity for a hearing before he is deprived of any significant protected interest";*

The US Supreme Court in Randall v. Brigham, 74 U.S. (7Wall.) 523, 19L. Ed 285 (1868) ..... In its opinion stated that a judge will be liable for judicial acts if they are done maliciously or corruptly.

The Supreme Court has made it clear that the doctrine of immunity should not be applied broadly and indiscriminately, but should be invoked only to the extent necessary to affect its purpose. "We must look beyond the status of the party seeking immunity and consider the nature of conduct for which immunity is sought." Gregory v. Thompson, 500 F.2d 59, 63-64 (9th Cir. 1974).

"Federal tort law: judges cannot invoke judicial immunity for acts that violate litigants civil rights; Robert Craig Waters. Tort & Insurance Law Journal, Spr. 1968 21 n3, p509-516." The Special Judge Proffitt intended to commit the Plaintiff /Appellant, Kay Kim, Pro Se to a mental institution for an alleged misdemeanor crime thereby violated the Plaintiff /Appellant, Kay Kim, Pro Se civil rights under the 8th Amendment – cruel and unusual punishment. Special Judge Proffitt violated the Plaintiff /Appellant, Kay Kim, Pro Se civil rights under the 5th amendment – due process by not dismissing cases that run out on the Stature of Limitations. Special Judge Proffitt violated the Plaintiff/Appellant, Kay Kim, Pro Se civil rights under the 6th amendment – by not allowing me to represent myself. These violations are brought pursuant to 42 U.S.C. § 1983.

U.S. Supreme Court, Zinermon v. Burch, 494 U.S. 113 (1990), 11th Circuit Court of Appeals, # 87-1965 (1990), 494 U.S. 113. under 42 U.S.C. § 1983 in the District Court against, *inter alios*...., the court granted petitioners' motion to dismiss under Federal 'Rule of Civil Procedure 12(b)(6), relying on Parratt v. Taylor, 451 U. S. 527, and Hudson v. Palmer, 468 U. S. 517, The Court of Appeals reversed and remanded. Re: Sindram, #88-6358, 489 U.S. 1064 (1989) 498 U. S. 177,... For purposes of review of a Rule 12(b)(6) dismissal, the factual allegations of Burch's complaint are taken as true..... We express no view on the ultimate merits of Burch's claim; we hold only that

his complaint was sufficient to state a claim under § 1983 for violation of his procedural due process rights. "We express no view on the ultimate merits of Burch's claim; we hold only that his complaint was sufficient to state a claim under 1983 for violation of his procedural due process rights." The judgment of the Court of Appeals is affirmed.

CONCLUSION

For the foregoing reasons, Petitioner Kay Kim, Pro Se respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit and the Indianapolis Southern District of Indiana entered in this proceedings that the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

Kay Kim, Pro Se-
Petitioner
4250 Village Pkwy
Cir East Unit 2
Indianapolis, IN 46254
(317) 641-5977

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

FINAL JUDGMENT

March 25, 2010

BEFORE: FRANK H. EASTERBROOK, Chief Judge
ANN CLAIRE WILLIAMS, Circuit Judge
JOHN DANIEL TINDER, Circuit Judge

No.: 09-3356

KAY KIM,
Plaintiff - Appellant

v.

GEORGE F. PARKER, M.D., IU Psychiatrist & as an Officer Capacity *Power given by the State, et al,*
Defendants – Appellees

Originating Case Information
District Court No: 1:09-cv-00829-DFH-JMS
Southern District of Indiana, Indianapolis Division
District Judge David F. Hamilton

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date.

form name: c7_FinalJudgment (form ID: 132)

APPENDIX B

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with
Fed. R. App. P. 32.1

United States Court Of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 24, 2010*
Decided March 25, 2010

Before

FRANK H. EASTERBROOK, Chief Judge

ANN CLAIRE WILLIAMS, Circuit Judge

JOHN DANIEL TINDER, Circuit Judge

No. 09-3356

KAY KIM,
Plaintiff - Appellant,

v.

GEORGE F. PARKER, *et al.*,
Defendants – Appellees

Appendix B

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:09-cv-829-DFH-JMS

David F. Hamilton, Judge.

ORDER

Kay Kim filed a lawsuit under 42 U.S.C.§ 1983, alleging constitutional violations related to an upcoming competency hearing in a state prosecution on misdemeanor charges. Kim complained that the judge and psychiatrist had taken away her right of self-representation without due process and were conspiring to have her indefinitely committed to a mental institution. She sued the judge who ordered the hearing; the court-appointed psychiatrist who evaluated her; and the psychiatrist's employer, Indiana University. The

---

*After examining the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. *See* FED. R. APP. P. 34(a)(2)(B).

district court dismissed Kim's federal lawsuit, concluding that none of the defendants could be sued under § 1983. Kim appeals, and we affirm.

Kim alleged in the complaint that the judge knew she could not be convicted of the criminal charges and so concocted this scheme to have her committed in lieu of going to trial. Kim asserted that the judge, upon receiving the report of the court-appointed psychiatrist diagnosing her with a paranoid personality disorder, appointed a lawyer to represent her at the competency hearing—an act she says unfairly deprived her of her right to self-representation.

The district court granted the defendants' motions to dismiss. The court concluded that the state-court judge was entitled to absolute immunity because she had ordered the competency examination and hearing in her official capacity. The court also determined that the psychiatrist had absolute immunity because his immunity was "co-extensive" with that of the judge who appointed him as an expert. Finally, the court found that Indiana University, as a state university, has immunity under the Eleventh Amendment and additionally, could not be held liable under § 1983 solely on the basis of its status as the psychiatrist's employer.

On appeal Kim asserts that the judge was not entitled to immunity because she had acted without any jurisdiction. According to Kim, the judge lacked jurisdiction because the statute of limitations had run on her criminal cases. But the statute of limitations provides a defense to criminal charges and does not affect a court's jurisdiction. *See Wallace v. State*, 753 N.E.2d 568 (Ind. 2001). More significantly, judges have absolute immunity in § 1983 actions seeking monetary damages for judicial acts taken within their jurisdiction. *Pierson v. Ray*, 386 U.S. 547, 553-55 (1967); *Bradley v. Fisher*, 80 U.S. 335, 351-52 (1871). Judges are immune for their judicial acts even if they commit "grave procedural errors," act "maliciously," or exceed the bounds of their authority as long as the case is not clearly outside their subject matter jurisdiction. *Stump v. Sparkman*, 435 U.S. 349, 356-57 & n.7, 359 (1978). Here, the judge had subject matter jurisdiction to hear the misdemeanor charges against Kim.

Kim next attacks the grant of immunity for the court-appointed psychiatrist and asserts that those who conspire with a judge are not protected by the judge's immunity. But 7"court-appointed experts, including psychiatrists, are absolutely immune from liability for damages when they act at the court's direction." *Cooney v. Rossiter*, 583 F.3d 967, 970 (7th Cir. 2009); *see Byrne v. Kysar*, 347 F.2d 734, 736 (7th Cir. 1965); *Duzynski v.*

Nosal, 324F.2d924, 928-29 (7th Cir. 1963); *Bartlett v. Weimer*, 268 F.2d 860, 862 (7th Cir, 1959); *see also Hughes v. Long*, 242 F.3d 121, 127-28 (3d Cir. 2001); *Morstad v. Dep't of Corr. & Rehab.*, 147 F.3d 741, 744 (8th Cir. 1998); *Johnson v. United States*, 547 F.2d 688, 693 m.36 (D.C. Cir. 1976); *Burkes v. Callion*, 433 F.2d 318, 319 (9th Cir. 1970). The court-appointed psychiatrist's own immunity was a proper basis for dismissal.

Regarding Indiana University, Kim asserts that the university is not entitled to immunity under the Eleventh Amendment because, she says, it is separable from the state, as reflected by its independent efforts to raise funds from the public. This assertion is misguided. Indiana University is an arm of the state and shares its sovereign immunity. *See Peirick v. Ind. Univ-Purdue Univ. Indianapolis Athletics Dep't*, 510 F.3d 681, 694-95 (7th Cir. 2007); *Porco v. Trs. of Ind. Univ.*, 453 F.3d 390, 395 (7th Cir. 2006). The university's independent power to raise funds does not affect its immunity under the eleventh Amendment. *See Kashani v. Purdue Univ.*, 813 F.2d 843, 846 (7th Cir. 1987).

AFFIRMED.

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

KAY KIM,)
Plaintiff,)
)
v.) No.1:09-cv-829-DFH-JMS
)
GEORGE F. PARKER, M.D.,et al.,)
Defendants.)

Entry Discussing Motion to Dismiss of George F. Parker, M.D.

Kay Kim is a defendant in four criminal prosecutions in Marion County. Those cases are pending. George F. Parker, M.D. ("Dr. Parker") is a psychiatrist. Dr. Parker was appointed by the court in which those cases are pending to conduct a competency examination of Kim. Dr. Parker evaluated Kim and on May 26, 2009, forwarded a written report of his evaluation to the court. This lawsuit against Dr. Parker and others was filed five weeks later.

Dr. Parker has filed a motion to dismiss, arguing that the complaint fails to state a claim upon which relief can be granted as to him.

The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal

sufficiency of a complaint, not the factual sufficiency. *Szabo v. Bridgeport Mach., Inc.*, 249 F.3d 672, 675-76 (7th Cir. 2001). A complaint is sufficient only to the extent that it "'contain[s] either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory.'" *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1969 (2007) (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F .2d 1101, 1106 (7th Cir. 1984)). In addition, "a plaintiff can plead himself out of court by alleging facts that show there is no viable claim." *Pugh v. Tribune Co.*, 521 F.3d 686, 699 (7th Cir. 2008).

Here, Dr. Parker's role is made perfectly clear in the complaint. His absolute immunity from a claim for damages–co-extensive with that of a judge in appointing such an expert–is equally clear. *Duzynski v. Nosal*, 324 F.2d 924 (7th Cir. 1963); *Bartlett v. Weimer*, 268 F.2d 860, 862 (7th Cir. 1959).

For the reasons explained above, therefore, Dr. Parker's motion to dismiss (dkt 15) is **granted.**

No partial final judgment shall issue at this time as to the claims resolved in this
Entry.

So ordered.

/s/
DAVID F. HAMILTON, CHIEF JUDGE
United States District Court.
Southern District of Indiana

Date: August 24, 2009

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

KAY KIM,)
Plaintiff,)
)
v.) No.1:09-cv-829-DFH-JMS
)
GEORGE F. PARKER, M.D.,et al.,)
Defendants.)

Entry Discussing Motion to Dismiss of Indiana University

This cause is before the court on the unopposed motion to dismiss defendant Indiana University ("IU"). That motion is premised on IU's argument that the complaint of Kay Kim fails to state a claim upon which relief can be granted as to it. Such a disposition is authorized under certain circumstances by Rule 12(b)(6) of the *Federal Rules of Civil Procedure*.

The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal sufficiency of a complaint, not the factual sufficiency. *Szabo v. Bridgeport Mach., Inc.*, 249 F.3d 672, 675-76 (7th Cir. 2001). A complaint is sufficient only to the extent that it "'contain[s] either direct or inferential allegations respecting all the material elements

necessary to sustain recovery under some viable legal theory.'" *Bell Atl. Corp. v. Twombly,* 127 S. Ct. 1955, 1969 (2007) (quoting *Car Carriers, Inc. v. Ford Motor Co.,* 745 F .2d 1101, 1106 (7th Cir. 1984)). That is, there must be "enough facts to state a claim to relief that is plausible on its face." *Id.* at 1974. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."*Ashcroft v. Iqbal,* 129 S. Ct. 1937, 1948 (2009). In addition, although the requirements of notice pleading are minimal, "a plaintiff can plead himself out of court by alleging facts which show that he has no claim." *Jackson v. Marion County,* 66 F.3d 151, 153 (7th Cir. 1995). A plaintiff "pleads himself out of court when it would be necessary to contradict the complaint in order to prevail on the merits." *Tamayo v. Blagojevich,* 526 F.3d 1074, 1086 (7th Cir. 2008)(citing *Kolupa v. Roselle Park Dist.,* 438 F.3d 713, 715 (7th Cir. 2006)).

IU's motion to dismiss is **granted** in this case for two reasons. First, Kim's complaint does not contain a claim with facial plausibility against IU. The only connection between any allegation of misconduct affecting Kim and IU is that IU employs Dr. Parker, who performed a court-ordered mental examination of Kim. This connection is insufficient to support liability under 42 U.S.C. § 1983. *Johnson v. Dossey,* 515 F.3d 778, 782 (7th Cir. 2008). Second, as a state university, IU shares

Indiana's Eleventh Amendment immunity, e.g., *Pedrick v. Ind. Univ.-Purdue Univ. Indianapolis Athletic Dept.*, 510 F.3d 681 (7th Cir. 2007); *Kashani v. Purdue Univ.*, 813 F.2d 843 (7th Cir. 1987), and there are no circumstances alleged or discernible here suggesting that such immunity would not be fully operative.

For the reasons explained above, therefore, IU's motion to dismiss (dkt 17) is **granted.**

No partial final judgment shall issue at this time as to the claims resolved in this Entry.

So ordered.

/s/
DAVID F. HAMILTON, CHIEF JUDGE
United States District Court.
Southern District of Indiana

Date: August 24, 2009

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

KAY KIM,)
Plaintiff,)
)
v.) No.1:09-cv-829-DFH-JMS
)
JUDGE JUDITH PROFFITT,,)
Defendants.)

Entry Discussing Motion to Dismiss and Directing Entry of Final Judgment

I.

Any claim against Judge Proffitt is dismissed because of this defendant's absolute immunity from the actions (judicial rulings) attributed to her. *Mireles v. Waco,* 502 U.S. 9, 11 (1991)("Judicial immunity is an immunity from suit, not just from ultimate assessment of damages."). "A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority." *Stump v. Sparkman,* 435 U.S. 349, 356-57 (1978). Judicial immunity can only be overcome in two circumstances:
(1) when the actions were not taken in the judge's official capacity; or (2) if the action is taken in complete lack of jurisdiction. *Mireles,* 502 U.S. at 11-12. In the instant action, the complaint

challenges decisions and rulings made by the judicial defendant during the course of prosecutions in which the plaintiff is a defendant; this challenged conduct was all taken in the judge's official capacity and while exercising the jurisdiction of her office.

II.

For the reasons explained in Part I of this Entry, therefore, Judge Proffitt's motion to dismiss is granted. The plaintiff's opposition to the motion does not identify circumstances sufficient to overcome Judge Proffitt's judicial immunity, and likewise does not disclose any reason to alter the disposition of the claims against the other two defendants.

All claims against all parties have now been resolved. Judgment consistent with this Entry and with the rulings of August 24, 2009 shall now issue. The costs of the action are assessed against the plaintiff.

So ordered.

/s/
DAVID F. HAMILTON, CHIEF JUDGE
United States District Court.
Southern District of Indiana

Date: September 17, 2009

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

KAY KIM,)
Plaintiff,)
)
v.) No.1:09-cv-829-DFH-JMS
)
GEORGE F. PARKER, M.D.,et al.,)
Defendants.)

J U D G M E N T

I.

The court, having this day made its Entry,

IT IS THEREFORE ADJUDGED that judgment is entered for the defendants and each of them and against the plaintiff, and that the plaintiff take nothing by her complaint.

The costs of the action are assessed against the plaintiff.

/s/
DAVID F. HAMILTON, CHIEF JUDGE
United States District Court.
Southern District of Indiana

Date: September 17, 2009

Appendix F

Laura Briggs, Clerk
United States district Court

/s/
Wendy Carpentier
By: Deputy clerk

APPENDIX G

1. The **Fifth Amendment** (Amendment V) to the United States Constitution:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

2. The **Sixth Amendment** (Amendment VI) to the United States Constitution:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

3. The **Eighth Amendment** (Amendment VIII) to the United States Constitution:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

4. The **Fourteenth Amendment** (Amendment XIV) to the United States Constitution:

"**Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

5. 42 U.S.C. § 1983:

Civil action for deprivation of rights.

6. 42 U.S.C. § 1988:

Proceedings in vindication of civil rights.